HON'BLE SRI JUSTICE GHULAM MOHAMMED

C.M.A.N0. 767 OF 2005

JUDGMENT:

This Appeal under Section 173 of the Motor Vehicles Act, 1988, is directed against the order dated 14.10.2003 passed by the Motor Vehicles Accident Claims Tribunal cum III Additional District Judge, Karimnagar (for short 'the Tribunal') in OP No. 408 of 2001 filed by the claimants claiming compensation of Rs. 9,00,000/- for the death of the deceased Gonepalli Malla Goud in a road accident that occurred on 19.12.1997 at about 4.00 p.m while the deceased was going towards Karimnagar on a Hero Honda Motor Cycle bearing No. AP-15-D-8651 and when he reached near bus stage of Deshrajpally, a Tractor Trailer bearing No. AP 15 U 2657/2658 came in opposite direction, driven by the first respondent in rash and negligent manner with high speed dashed the deceased. Respondents 1 and 2 being driver and owner of the Tractor and Trailer respectively field their counter affidavits denying all averments in the petition. Third respondent, being insurer of the Tractor filed its counter denying all the averments in the petition stating that there is no valid policy subsisting on the date of accident.

2. The Tribunal having held that the accident occurred due to rash and negligent driving of the driver of Tractor cum Trailer bearing No. AP 15 U 2657/2658 awarded a sum of Rs. 8,53,376/- with interest at the rate of 9% per annum payable by the respondents 1 to 3 jointly and severally from the date of petition till the date of payment. Aggrieved by the same, the National Insurance Company filed the present Civil Miscellaneous Appeal.

3. Sri Kota Subbarao, learned counsel appearing for the appellant submits that he is not disputing the facts and circumstances of the case but requests this court to reduce the rate of interest granted by the Tribunal.

4. Heard the learned counsel appearing for the appellant and also perused the entire material made available on record.

5. As seen from the record, it is no doubt true that due to rash and negligent driving of the Tractor and Trailor bearing No. AP 15U 2657/2658 by its driver, accident occurred and due to which the deceased sustained serious injuries and he was succumbed to injuries. PW-2 is an eye witness to the accident and he was the pillion rider. With regard to earnings, PW-1 wife of the deceased deposed that the deceased was aged 25 years by then and was working as Police Constable attached to Police Station, Kathlapur and at that time he was drawing Rs. 2,852/- per month. Her evidence was corroborated with the evidence of PW-2 who is also police constable working in Adilabad District. Basing on the Postmortem Certificate Ex. A-3 the age of the deceased was 25 years by then therefore, the appropriate multiplier taken was 18 and as far as the income is concerned, the Tribunal following the judgment of this Court reported in G. VARALAKSHMI AND OTHERS VS. APSRTC[1], calculated the annual income at Rs. 68,448/- and out of that 1/3rd deducted towards personal living expenses, then net amount comes to Rs. 45,632/- per annum and the same has to be multiplied by 18 then the total amount comes to Rs. 8,21,376/-. The

Tribunal granted Rs. 15,000/- towards loss of consortium and Rs. 15,000/- towards loss of estate and Rs. 2,000/- towards funeral expenses, totaling to Rs. 8,53,376/-. The dispute is with regard to apportionment of compensation. Before going into that aspect, we have to necessarily look into the definition of Legal Representative under the Motor Vehicle Act.

> "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

6. With regard to heirs, In MONORAMA DEVI AND OTEHRS VS. ORIENTAL INSURANCE COMPNAY LIMITED AND ANOTHER[2] , the Calcutta High Court at paragraph 49 observed as under:

> "Out of the said sum of Rs. 4,18,500, a sum of Rs. 4,13,500, that is, the aforesaid compensation amount, less Rs. 5,000/- awarded or the loss of consortium, will be apportioned equally between the appellant Nos. 1 and 2, who, being the wife and the mother respectively of the victim are his class I heirs under the provisions of the Hindu Succession Act, 1956. The appellant No. 1, as wife of the victim, will in addition, get Rs. 5,000 on account of compensation for loss of consortium. Since the victim has left class I heirs, the appellant No. 3, who is a class II

heir, will not be entitled to any compensation."

7. In view of the above and also in view of the facts and circumstances of the case, the contention of the counsel appearing for the appellants cannot be accepted inasmuch as the widow by virtue of death of her husband she lost his company till death and she will face mental agony as she has to survive herself and her children without her husband. In the circumstances, I do not find any illegality or infirmity in the order passed by the Tribunal and the Tribunal has not committed any error.

8. As far as the rate of interest is concerned, taking into consideration the recent Supreme Court judgments the rate of interest granted by the Tribunal at 9% per annum is reduced to 6% per annum as requested by the learned counsel appearing for the appellant.

9. Accordingly, the Appeal filed by the Insurance Company is allowed in part reducing the rate of interest granted by the Tribunal from 9% per annum to 6% per annum. There shall be no order as to costs.

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GHULAM MOHAMMED, J

Date: 26.8.2010

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[1] 2001 (1) ALD 101

[2] 2003 ACJ 278